

RD AN No. 4747 (1944-N)
February 10, 2014

TO: State Directors
Rural Development

ATTN: Program Directors
Multi-Family Housing

FROM: Tony Hernandez *(Signed by Tony Hernandez)*
Administrator
Housing and Community Facilities Programs

SUBJECT: Implementation of 42 U.S.C. 14043e-11 of the Violence Against Women
Reauthorization Act in Rural Development's Multi-Family
Housing Programs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to inform State Directors, Program Directors, Borrowers, and Management Agents of the protections afforded to tenants and affiliated individuals residing in Rural Development-funded Multi-Family Housing (MFH) properties, under the 42 U.S.C. 14043e-11 of the Violence Against Women Reauthorization Act (VAWA Act) (a copy of which is attached as Attachment A).

The VAWA Act provides tenant rights and protections to certain programs authorized under sections of the Housing Act of 1949, as amended (42 U.S.C. §1471, *et seq*); namely, Rural Development's Section 515 Rural Rental Housing (RRH), Section 514/516 Farm Labor Housing (FLH), Section 538 Guaranteed Rural Rental Housing (GRRH), and Section 533 Housing Preservation Grant (HPG) programs (referred collectively as MFH Programs). (See 42 U.S.C. 14043e-11(a)(3)(I)).

EXPIRATION DATE:
February 28, 2015

FILING INSTRUCTIONS:
Preceding RD Instruction 1944-N

COMPARISON WITH PREVIOUS AN:

There have been no previous ANs on this subject.

IMPLEMENTATION RESPONSIBILITIES:

MFH staff should read and understand the VAWA Act (Attachment A), and be prepared to implement the Model Emergency Transfer Plan, which is the current Letter of Priority Entitlement process (Attachment B). At this time, no changes need to be made to Tenant Leases, Occupancy Rules, or the Management Plan.

Highlights of the VAWA Act

- Provides legal rights and protections for victims of domestic violence, dating violence, sexual assault, or stalking, as well as their immediate family members.
- Prohibits victims of domestic violence, dating violence, sexual assault, or stalking from being evicted or being denied housing if an incident of violence is reported and confirmed.
- Criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking is not grounds for terminating the victim's tenancy. (See 7 C.F.R. 3560.154(j))
- Provides for the bifurcation of the lease in order to remove an offending household member from the home, while allowing the victim, who is a tenant or lawful occupant, to remain. (For implementation guidance see 7 C.F.R. 3560.158(b) and 3560.158(d))
- Allows owners and managers to request a tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking in determining whether the protections afforded under the VAWA Act are applicable. (See "Rural Development Form of Certification" below)
- Requires that all information pertaining to an incident of domestic violence, dating violence, sexual assault, or stalking remain confidential. A notice of victim's right to confidentiality will be provided to applicants and tenants by owner or manager, once the notice is made available by HUD.
- Impacted tenants may be transferred to another available and safe dwelling unit. (See Attachment B, "Rural Development Model Emergency Transfer Plan")

HUD Notice (42 U.S.C. 14043-11(d))

Under the VAWA Act, the Secretary of Housing and Urban Development (HUD) shall develop a notice of the rights of individuals under the VAWA Act including the right to confidentiality and the limits thereof. To date, this notice has not been developed. USDA will amend this AN once HUD's notice is created.

Rural Development Form of Certification (42 U.S.C. 14043-11(c)(3)(A))

Under the VAWA Act, the Agency must approve a form to be used for victims of domestic violence, dating violence, sexual assault, or stalking. To date, this form has not been approved. This AN will be amended when such approval occurs.

Certification of Legal Compliance Presumed to Cover Compliance with VAWA Act

Participants in the Sections 514, 515, 516, 533, and 538 programs must certify compliance with applicable law (e.g., 7 C.F.R. 3560.102(a), 7 C.F.R. 3560.352(c)(4), and 7 C.F.R. 3565.105(b)). Since the VAWA Act applies to each of these programs, these certifications necessarily relate to compliance with applicable provisions of the VAWA Act.

Recommendations to Owners and Managers for Implementation of the VAWA Act

Owners and managers of housing affected by the VAWA Act should update their Tenant Selection Policy and Occupancy Rules, if applicable, to incorporate the tenant's rights and protections, to ensure uniformity in spreading awareness of the VAWA Act, and to avoid improper evictions.

Owners and managers of housing covered by this AN, and that receive Section 8 assistance, should comply with any HUD requirements. HUD currently utilizes Lease Addendum, Form HUD 91067, which includes certain rights and provisions of the VAWA Act.

The ownership agreement between the HPG grantee and rental property owner or co-op should include a clause that the owner(s) agrees and certifies that the assistance being made available is subject to the VAWA Act.

The Grant Agreement, should be amended using as a model Exhibit B of subpart N of 7 C.F.R. part 1944, to state that the HPG grantee shall comply with the VAWA Act and should include a clause in the ownership agreement that the assistance being made available is subject to the VAWA Act. Any amendments will require Rural Development's approval.

If you have any questions, you may contact Barbara Chism, Multi-Family Housing Portfolio Management Division, at (202) 690-1436.

Attachments

Effective: March 7, 2013

United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

Chapter 136. Violent Crime Control and Law Enforcement

Subchapter III. Violence Against Women

[Part M](#). Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

[Subpart 2](#). Housing Rights

→→ § 14043e-11. Housing protections for victims of domestic violence, dating violence, sexual assault, and stalking

(a) Definitions

In this subpart:

(1) Affiliated individual

The term “affiliated individual” means, with respect to an individual--

(A) a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis; or

(B) any individual, tenant, or lawful occupant living in the household of that individual.

(2) Appropriate agency

The term “appropriate agency” means, with respect to a covered housing program, the Executive department (as defined in [section 101 of Title 5](#)) that carries out the covered housing program.

(3) Covered housing program

The term “covered housing program” means--

(A) the program under [section 1701q of Title 12](#);

(B) the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act ([42 U.S.C. 8013](#));

(C) the program under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act ([42 U.S.C. 12901 et seq.](#));

(D) the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act ([42 U.S.C. 11360 et seq.](#));

(E) the program under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act ([42 U.S.C. 12741 et seq.](#));

(F) the program under [paragraph \(3\) of section 1715/\(d\) of Title 12](#) that bears interest at a rate determined under the proviso under paragraph (5) of such section 1715/(d);

(G) the program under [section 1715z-1 of Title 12](#);

(H) the programs under [sections 1437d](#) and [1437f](#) of this title;

(I) rural housing assistance provided under [sections 1484](#), [1485](#), [1486](#), [1490m](#), and [1490p-2](#) of this title; and

(J) the low-income housing tax credit program under [section 42 of Title 26](#).

(b) Prohibited basis for denial or termination of assistance or eviction

(1) In general

An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) Construction of lease terms

An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as--

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

(3) Termination on the basis of criminal activity

(A) Denial of assistance, tenancy, and occupancy rights prohibited

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

(B) Bifurcation

(i) In general

Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) Effect of eviction on other tenants

If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant an opportunity to establish eligibility for the covered housing program. If a tenant described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall

provide the tenant a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

(C) Rules of construction

Nothing in subparagraph (A) shall be construed--

(i) to limit the authority of a public housing agency or owner or manager of housing assisted under a covered housing program, when notified of a court order, to comply with a court order with respect to--

(I) the rights of access to or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(II) the distribution or possession of property among members of a household in a case;

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an affiliated person of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate;

(iii) to limit the authority to terminate assistance to a tenant or evict a tenant from housing assisted under a covered housing program if a public housing agency or owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted; or

(iv) to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) Documentation

(1) Request for documentation

If an applicant for, or tenant of, housing assisted under a covered housing program represents

to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager may request, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3).

(2) Failure to provide certification

(A) In general

If an applicant or tenant does not provide the documentation requested under paragraph (1) within 14 business days after the tenant receives a request in writing for such certification from a public housing agency or owner or manager of housing assisted under a covered housing program, nothing in this subpart may be construed to limit the authority of the public housing agency or owner or manager to--

- (i) deny admission by the applicant or tenant to the covered program;
- (ii) deny assistance under the covered program to the applicant or tenant;
- (iii) terminate the participation of the applicant or tenant in the covered program; or
- (iv) evict the applicant, the tenant, or a lawful occupant that commits violations of a lease.

(B) Extension

A public housing agency or owner or manager of housing may extend the 14-day deadline under subparagraph (A) at its discretion.

(3) Form of documentation

A form of documentation described in this paragraph is--

(A) a certification form approved by the appropriate agency that--

- (i) states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;
- (ii) states that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under

subsection (b); and

(iii) includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide;

(B) a document that--

(i) is signed by--

(I) an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse; and

(II) the applicant or tenant; and

(ii) states under penalty of perjury that the individual described in clause (i)(I) believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b);

(C) a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or

(D) at the discretion of a public housing agency or owner or manager of housing assisted under a covered housing program, a statement or other evidence provided by an applicant or tenant.

(4) Confidentiality

Any information submitted to a public housing agency or owner or manager under this subsection, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence by the public housing agency or owner or manager and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is--

(A) requested or consented to by the individual in writing;

(B) required for use in an eviction proceeding under subsection (b); or

(C) otherwise required by applicable law.

(5) Documentation not required

Nothing in this subsection shall be construed to require a public housing agency or owner or manager of housing assisted under a covered housing program to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(6) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with subsection (b) by a public housing agency or owner or manager of housing assisted under a covered housing program based on documentation received under this subsection, shall not be sufficient to constitute evidence of an unreasonable act or omission by the public housing agency or owner or manager or an employee or agent of the public housing agency or owner or manager. Nothing in this paragraph shall be construed to limit the liability of a public housing agency or owner or manager of housing assisted under a covered housing program for failure to comply with subsection (b).

(7) Response to conflicting certification

If a public housing agency or owner or manager of housing assisted under a covered housing program receives documentation under this subsection that contains conflicting information, the public housing agency or owner or manager may require an applicant or tenant to submit third-party documentation, as described in subparagraph (B), (C), or (D) of paragraph (3).

(8) Preemption

Nothing in this subsection shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this subsection for victims of domestic violence, dating violence, sexual assault, or stalking.

(d) Notification

(1) Development

The Secretary of Housing and Urban Development shall develop a notice of the rights of individuals under this section, including the right to confidentiality and the limits thereof.

(2) Provision

Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program--

(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;

(B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program;

(C) with any notification of eviction or notification of termination of assistance; and

(D) in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with [Executive Order 13166 \(42 U.S.C. 2000d-1\)](#) note; relating to access to services for persons with limited English proficiency).

(e) Emergency transfers

Each appropriate agency shall adopt a model emergency transfer plan for use by public housing agencies and owners or managers of housing assisted under covered housing programs that--

(1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if--

(A) the tenant expressly requests the transfer; and

(B)(i) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or

(ii) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and

(2) incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person

that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(f) Policies and procedures for emergency transfer

The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under [section 1437f\(o\)](#) of this title.

(g) Implementation

The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.

Rural Development Model Emergency Transfer Plan

Tenants who are actual or imminent victims of domestic violence shall be permitted by the owner or manager to transfer to another available and safe dwelling unit assisted under the MFH Program covered by this AN when a transfer is requested by a tenant, and (1) the tenant reasonably believes that he or she is threatened with imminent harm from further violence if he or she remains within the same dwelling; and (2) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90-day period preceding the request for transfer.

Tenants requesting an emergency transfer under the VAWA Act may receive benefits under 49 U.S.C. part 24, "Uniform Relocation Assistance and Real Property Acquisition Act", by requesting a Letter of Priority Entitlement from the Agency, as Rural Development considers this to be a situation beyond the tenant's control under 7 CFR 3560.159(c).

7 CFR 3560.159(c) states, "If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period."

Reasonable confidentiality measures must be incorporated by owners and managers so that the location of the new dwelling is not disclosed to the person that commits an actual or imminent act of violence.